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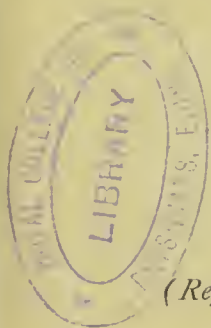
MEDICAL AND LEGAL
PREVENTIVES AND REMEDIES
FOR
DRUNKENNESS AND DIPSOMANIA.

TWO ADDRESSES

BY

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DRUNKENNESS AND DIPSOMANIA:
MEDICAL AND LEGAL PREVENTIVES AND REMEDIES.*

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THAT great lawyer, Sir Edward Coke, who in 1593 occupied the position of Speaker of the House of Commons, but who in respect of his other numerous offices and large experience must be considered as by far the most conspicuous embodiment of the legal traditions of the age of Elizabeth and James, has transmitted to us a curious expression, which, taken in connection with what we know from other sources as to the current beliefs of his time, may perhaps form an authoritative text for the present discourse. A drunkard, according to Coke, is “voluntarius dæmon”—*i.e.* a man *possessed*, dominated by an evil spirit not his own, but whom he chooses, of his own accord (as it were) voluntarily, to invite into possession. Whereupon follows the strictly legal consequence, that while the fact of possession—or, as we should say, of *insanity*—is admitted by implication, the privilege attaching to the fact is avoided or set aside; for, he adds, the drunkard “hath no privilege thereby, but what hurt

* An Address delivered at the Inaugural Meeting of the Midland Medical Society, November 16th, 1889.

or ill soever he doeth, his drunkenesse doth aggravate it.”* And this conclusion, at least as regards the essence or principle of it, is equally affirmed by Coke’s great rival Lord Bacon, in the only allusion to the subject that I can find in his writings :—“If a madman commit a felony, he shall not lose his life for it, because his infirmity came by the act of God ; but if a drunken man commit a felony, he shall not be excused, because his imperfection came by his own default.”†

The consent of these two great authorities might be considered as decisive with regard to the traditions and precedents of English law ; but in Plowden’s *Commentaries* we find a similar idea sufficiently clearly expressed, and referred back to Aristotle as its source.‡ And Sir Matthew Hale, in his *Pleas of the Crown*, gives a well-reasoned view of the whole matter as it was understood in his day (middle of 17th century), as follows :—

“The third sort of *Dementia* is that which is *dementia affectata*, viz., drunkenness. This vice doth deprive men of the use of reason, and puts many men into a perfect but temporary phrenzy ; and therefore, according to some civilians, such a person committing homicide shall not be punished simply for the crime of homicide, but shall suffer for his drunkenness answerable to the nature of the crime occasioned thereby ; so

* Coke, *Inst.* 247. Blackstone, who quotes this passage from Coke, rather strengthens than weakens the last statement. when he says that “our law looks upon this (drunkenness) as an aggravation of the offence rather than as an excuse for any criminal misbehaviour.”—*Commentaries*, Book IV., ch. 2.

† *Maxims of the Law*. Reg. V. Lord Bacon’s works. Spedding, Ellis, and Heath’s edition, vol. 7, p. 346. 1870.

‡ Plowden, *Comm.* 19. “If a man breaks the words of the law through *voluntary* ignorance, there he shall not be excused. As if a person that is drunk kills another, this shall be felony, and he shall be hanged for it, and yet he did it through ignorance : for when he was drunk he had no understanding nor memory ; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby. And Aristotle says that such a man deserves double punishment, because he has doubly offended, viz., in being drunk to the evil example of others, and in committing the crime of homicide. And the act is done *ignoranter*, for that he is the cause of his own ignorance ; and so the diversity appears between a thing done *ex ignorantia* and *ignoranter*.”

that yet the general cause of his punishment is rather the drunkenness than the crime committed in it; but by the laws of England such a person shall have no privilege by this voluntary contracted madness; but shall have the same judgment as if he were in his right senses.

“But yet there seem to be two allays to be allowed in this case.

“1. That if a person by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causeth a temporary phrenzy, as *aconitum* or *nux vomica*, this puts him into the same condition in reference to crime as any other phrenzy, and equally excuseth him.

“2. That altho’ the *simplex* phrenzy occasioned *immediately* by drunkenness excuse not in criminals, yet if by one or more such practices an *habitual* or fixed phrenzy be caused, tho’ this madness was contracted by the vice and will of the party, yet this habitual and fixed phrenzy thereby caused puts the man into the same condition in relation to crimes, as if the same were contracted involuntarily at first.”

This passage is of singular importance, as indicating the first approach to a recognition in English law of the position of a man who is so demented by drink as to be no longer his own master; and although, perhaps, the “fixed phrenzy” here alluded to can scarcely be construed so as to include the case of the habitual drunkard, merely as such, it opens the way to all the questions that fall to be considered in the present address.

The law of Scotland on this subject is thus stated by Baron Hume (vol. i., p. 45), with certain practical suggestions which may serve to illustrate the preceding citations:—

“The law of Scotland views this wilful distemper with quite a different eye from what is the visitation of Providence; and if it does not consider the man’s intemperance as an *aggravation*, at least sees very good reasons why it should not be allowed as an *excuse*, to save him from the ordinary pains of his transgression. Not to mention that we cannot well lay claim to favour, on account of that which itself shews a disregard of order and

decency, how are the different degrees of ebriety to be distinguished, or the real ebriety to be known from that which is affected? or what protection could we have, if this were law, against the attempts of such as might inflame themselves with liquor on purpose to gain courage to indulge their malice, and an opportunity to do it safely? Besides, if there were no risk of such contrivances, it is indispensable to guard the safety of the decent and peaceable part of the community, who would otherwise be at the discretion of the dissolute and worthless."

But he goes on to say that the rule is not quite absolute in cases where the offence is chiefly a violation of order, etc.

As I do not propose on the present occasion to deal in any very exhaustive manner with the question of legal responsibility, I will only allude further to a modification in practice of the effect of the law in Scotland, first brought under my own notice by the late Lord Deas, a judge of vast experience in criminal cases, and reputed to be rather uncompromising than otherwise in his judgments. On the occasion of my delivering the Morison lectures on Insanity in 1879,* his lordship not only attended the lectures throughout, but gave me the benefit of his remarks on various points; one of these being the one now in question. Lord Deas then stated that, while entirely concurring in the principle that drunkenness, and even habitual drunkenness and allied conditions, such as delirium tremens, when not amounting legally to insanity, form no excuse for crime, he had been able, in two such cases, to establish a precedent in favour of reducing the quality of the offence from murder to culpable homicide. These two cases may well detain us for a moment, inasmuch as, even in allowing this important modification, they illustrate in the strongest manner the tendency of the law to disown insanity as a defence, whenever the mental disorder is attributable to alcoholic excess.

* Delivered at the Royal College of Physicians of Edinburgh, under a bequest to the College by the late Sir Alexander Morison; and open to the Fellows of the College, and to members of the legal and medical profession and others, on application. Under the title "Insanity: Modern views as to its Nature and Treatment"; part of the earlier lectures of this course was published in 1885, by Messrs. James Maclehose and Sons, Glasgow.

The first case referred to by Lord Deas is that of a judicial charge given by him, tending to establish, if not a new principle, at least a new precedent, in law, according to his lordship, viz., that in a case charged as murder, the state of mind of the accused (as affected by habitual drunkenness) may be an element for the consideration of the jury in deciding the question between murder and culpable homicide; even when there is no room legally for directing an acquittal on the ground of insanity. This case, which occurred in 1867, was that of an Aberdeenshire proprietor "habitually and irreclaimably addicted to drinking," who caused the death of his wife by stabbing her with a carving-knife, admittedly on very slight provocation. The defence was that "at the time of the alleged act the prisoner was insane." There was, in fact, no considerable conflict of evidence, medical or other, in this case. The habit of constant drinking to excess, carried on for more than twenty years, had not indeed produced well-marked insanity, but only such an amount of weakness of mind as was apparent to several witnesses, and even to his own lawyer in going over his correspondence, so that he regarded him as "at times not quite sane." There was also the tradition (not, however, established by medical evidence) of a sunstroke in India, and of something approximating to epileptic fits after his return to this country. But above all, there was the history of drinking habits so long continued and excessive that from 1846, when he made a voluntary retreat for six months to an institution intended for reformation of drunkards (but apparently very ineffectual for its purpose), to 1867 he could hardly ever be restrained, and was regarded by various medical men as "weak-minded, wayward, and eccentric," though not sufficiently insane to be placed in confinement under certificates.

The facts of the case shewed that the homicidal assault upon his wife took place when he had had liquor, but was not obviously drunk, and that it was probably provoked by his displeasure at her having "hidden a pint bottle of whisky and some money on the night in question to prevent him from getting more drink."

It is worth while to remark that evidence as to the existence of positive insanity in an uncle, grand-uncle, and two aunts, who were known by Dr. Dyce, of Aberdeen to have been inmates of a lunatic asylum, was excluded by the Court as inadmissible in law.

Lord Deas said "there remained the question whether the offence was anything short of murder. And here his lordship said that it was difficult for the law to recognise it as anything else. On the other hand, however, he could not say that it was beyond the province of the jury to find a verdict of culpable homicide if they thought that was the nature of the offence. The chief circumstances for their consideration with this view were:—1st, The unpremeditated and sudden nature of the attack; 2nd, the prisoner's habitual kindness to his wife, of which there could be no doubt, when drink did not interfere; 3rd, there was only one stab or blow—this, while not, perhaps, like what an insane man would have done, was favourable for the prisoner in other respects—4th, the prisoner appeared not only to have been peculiar in his mental constitution, but to have had his mind weakened by successive attacks of disease. It seemed highly probable that he had a stroke of the sun in India, and that his subsequent fits were of an epileptic nature. There could be no doubt that he had had repeated attacks of delirium tremens; and if weakness of mind could be an element in any case in the question between murder and culpable homicide, it seemed difficult to exclude that element here. . . . The state of mind of a prisoner might, his lordship thought, be an extenuating circumstance, although not such as to warrant an acquittal on the ground of insanity; and he could not therefore exclude it from the consideration of the jury here, along with the whole other circumstances, in making up their minds whether, if responsible to the law at all, the prisoner was to be held guilty of murder or of culpable homicide." The jury unanimously found the prisoner guilty of culpable homicide; and he received a sentence of ten years' penal servitude.—Irvine's *Justiciary Reports*, vol. v., p. 479.

The second case, *H.M. Advocate v. Andrew Granger*, occurred in September, 1878 (*Scottish Law Reporter*, vol. xvi., p. 253), and affords even a more curious glimpse than the preceding one into the legal precedents as regards crimes committed under the influence of drink. The case was charged by the Crown as murder; but here also, under the advice of the judge, a verdict of culpable homicide was returned by the jury. In the interval, however, it is desirable to note (though not having any very direct relation to our present subject) that a case had occurred of theft, in which Lord Deas claims to have applied the same principle of a modification of the penalty in accordance with weakness of mind short of legal insanity, so as to reduce a sentence which might probably have been one of penal servitude to one of six months' imprisonment. This case need not detain us, except in so far that the fact of its being referred to at all as a precedent shews how sparingly and tentatively, as it were, even Lord Deas had in the course of eleven years been able to bring into operation what he evidently regarded as an important innovation. Andrew Granger's case was confessedly a case of pure delirium tremens leading directly to homicide under the influence of the mania of suspicion, so familiar to all of you as a common feature of that disease. There was practically no dispute as to this. Lord Deas held that by the theory of the law as applied to offences arising from drink, the man, if he knew that he was committing a crime at all, was responsible, and the legal penalty of a verdict of guilty of murder would of course have been death. But he also held, as in the preceding cases, that aberration of mind *not amounting to insanity* may legitimately form an element in the question between murder and culpable homicide; and that the case of acutely developed delirium tremens formed one to which this description was applicable. Now here, I confess, my medical instincts wholly revolt from the position which Lord Deas attributes to the law. I do not presume to say that the actual verdict in this case, and the penalty arising from it, were not legal; but what I do say is that if the mania of suspicion arising

from pure delirium tremens is *not* to be construed as insanity, then I do not know any other kind of mania, and especially of transitory mania, witnessed in asylums or elsewhere, which is capable of being so construed. I accordingly wrote to Lord Deas that whatever the legal consequences, had I been asked the question in the witness-box in this case, I should have had not the slightest difficulty or doubt in saying that Granger was insane at the time he did this act; and further that his insanity was of a kind that in all probability totally deprived him for the time being of self-control quite as much as in any ordinary case of mania.

As this address, however, is not intended to cover the whole vast question of the complications arising in law as between insanity and drink, but only so much of it as bears on the application of preventive legislation, I shall merely indicate, without discussion, what appears to me to be the outcome of the preceding remarks. We shall hardly go far wrong if we hold, with Coke and Sir Matthew Hale, that even the most simple act of drunkenness is, in fact, a kind of insanity, or *dementia affectata* (as Hale calls it) which differs from other insanities chiefly in being voluntarily brought on or provoked, and also more transitory than most of them. But the first of these elements of difference, which Coke has set forth in the remarkable expression of the “voluntarius dæmon,” is held to be of such importance as altogether to reverse the presumptions in law as to the irresponsibility of insane persons, and in the opinion of some jurists at least, to imply even an aggravation of the crime, or at least to deprive the criminal of all “privilege,” that is, of all favourable consideration as regards his offence and its punishment, unless it can be shewn otherwise that the offence was not “voluntary,” either by reason of insanity of some other kind, or by the drunkenness itself being involuntary, as Sir Matthew Hale very clearly puts it. And in his admission, that “an habitual or fixed phrenzy”—even when “contracted by the vice and will of the party” (that is to say, through habitual or practically uncontrolled drunkenness) constitutes a valid

excuse or "allay" in respect of punishment for crime, putting the criminal "into the same condition in reference to crime, as any other phrenzy," we have, I suppose, the ultimatum of the law of England as respects the criminal responsibility of the drunkard.

Now I believe it is the opinion of almost the entire medical profession that the intricate questions connected with the responsibility of the drunkard for crime cannot be adequately dealt with under the present state of the law; but I am not prepared, on the present occasion, to enter more largely into this subject, and in the remainder of this address I propose to confine myself to the question of prevention, as aided by legal restraints. To prevent misconception, however, I may add that I do not share the views of those among us who, by looking upon inebriety or habitual drunkenness, *entirely* as a disease, would practically annihilate or minimise the sense of responsibility in the drunkard. It has always appeared to me a mere waste of time to discuss how far drunkenness is a disease, and how far it is a vice. In the great majority of cases of habitual drunkenness, it is both the one and the other—a vice, because it consists essentially of yielding to a temptation which ought to be resisted, and of which the drunkard, of all men, best knows that it ought to be resisted; a disease, because the alterations, both of function and of structure, that follow the constant use of the stronger alcoholic stimulants to excess, amount in many cases to well-marked organic changes in almost every part of the body, and probably in all cases, sooner or later, to a merely physical decay affecting both body and mind. I am, therefore, not at all disposed to recoil from the application of Coke's principle, that the drunkard, speaking generally, is "voluntarius dæmon," and therefore punishable. But just because the stern necessity of maintaining the law as "an avenger to execute wrath" compels us to give effect to the "voluntary" element in a drunken frenzy, and to consider it, with Sir Matthew Hale, as a *dementia affectata*; we may reasonably hold that in proportion as this voluntary element is manifestly subverted and in the end, gradually

withdrawn under the influence of long-continued indulgence, the protection of the law ought to be thrown around the victims of this frightful tyranny. It is not at all necessary that in advocating a preventive treatment of the habitual drunkard, we should close our eyes to the fact that he is, in all or in most cases, responsible in some degree for his own wretchedness and degradation. What we maintain is, that the failure of our existing system demonstrates, and the experience of every medical man confirms, the truth that the habitual drunkard is in only too many cases absolutely a *slave* to his vice ; or rather to the subtle and long continued workings of that “invisible spirit of wine” that “enemy put into men’s mouths to steal away their brains,” which Shakspeare, no less than Sir Edward Coke, recognised as a kind of demoniac possession.*

I do not suppose that anyone sufficiently interested in this sad subject to be present in this room to-night can require proof of the fact that the habitual drunkard is, as matters stand at present, usually also an utterly irreclaimable drunkard. This fact has been so often attested by men of the largest experience and of the most widely differing schools of thought, that it may be discussed quite apart from the more or less technical question whether, and how far, such an irreclaimable drunkard is to be considered as insane. In the admirable Report presented to the House of Commons, in 1872,† the whole subject is in fact so discussed, and the unanimous opinion alike of the Members of the Committee, and of the numerous skilled witnesses examined, is contained in the following brief but weighty sentences :—

“That there is entire concurrence of all the witnesses in the absolute inadequacy of existing laws to check drunkenness,

* Othello, Act II., Scene 3.

† Report from the Select Committee on Habitual Drunkards : together with the Proceedings of the Committee, Minutes of Evidence, and Appendices. The Committee included, amongst others. Mr. Donald Dalrymple as Chairman, Dr. Lyon Playfair, Sir Harcourt Johnstone, Mr. Samuelson, Mr. Akroyd, Lord Claud Hamilton ; and among the witnesses examined were the late Dr. Anstie, the late Dr. Skae, Dr. Crichton Browne, Dr. Arthur Mitchell, Governors and Officers of Prisons, Chief Constables, Lawyers, and heads of Inebriate Asylums in this country and in America.

whether casual or constant ; rendering it desirable that fresh legislation on the subject should take place, and that the laws should be made more simple, uniform, and stringent."

"That small fines and short imprisonments are proved to be useless, as well by the testimony of competent witnesses, as by the fact that the same individual is convicted over and over again, to even more than 100 times."

"That occasional drunkenness may, and very frequently does, become confirmed and habitual, and soon passes into the condition of a disease uncontrollable by the individual, unless indeed some extraneous influence, either punitive or curative, is brought into play.

"That self-control is suspended or annihilated ; moral obligations are disregarded ; the decencies of private and the duties of public life are alike set at nought ; and individuals obey only an overwhelming craving for stimulant to which everything is sacrificed."

"That the absence of all power to check the downward course of a drunkard, and the urgent necessity of providing it, has been dwelt upon by nearly every witness ; and the legal control of an habitual inebriate, either in a reformatory, or in a private dwelling is recommended, in the belief that many cases of death resulting from intoxication, including suicides and homicides, may be thus prevented."

"That this power is obtained easily, at moderate cost, and free from the danger of abuse and undue infringement of personal liberty, has been stated in evidence by quotations from American and Canadian Statutes, as well as by the witnesses from America."

These words seem to me to cover the whole ground, and they render it quite unnecessary here to trouble you with yet another lengthened expression of opinion upon the subject, or upon the manifold and subtle associations of what everyone admits to be insanity proper, with the vice or disease of drunkenness. To me, individually, it is abundantly clear that madness, or insanity, is at once the parent and the child of the drink-habit. The parent, because it too often happens that

unstable nervous systems—the sad inheritance, perhaps, of several generations—become an easy prey to the habit. The child, because continued indulgence in the stronger stimulants, even with previously intact nervous systems—and much more, of course, in such as were primarily unstable—has a terrible and a cumulative tendency to give rise to many other forms of insanity besides delirium tremens. In such complicated cases cause and effect are often so subtly linked together that not the most skilled observers can disentangle them so as to present a clear issue to a court, or to define in a particular case what is insanity and what mere vicious indulgence. And I would urge that—except in relation to the question of responsibility for crime, already alluded to—there is really no object to be served in attempting this all-but-impossible distinction. For, if it is once conceded that an expediency of the highest kind, in respect alike of the victim himself and his family, requires a measure of legal restraint to be applied to the otherwise incorrigible drunkard, it becomes a matter of minor importance, indeed mainly an academical question, whether such a drunkard is to be regarded as technically insane or not.

It is now more than thirty years since my own convictions on this subject were carried to the point above mentioned in consequence of the singularly luminous exposition of the whole subject by the late Sir Robert Christison, in a lecture before the Royal College of Surgeons, on 19th March, 1858.* Since then, a provision was grudgingly introduced into one of the Lunacy Acts (29 and 30 Vic. Cap. 51) to the effect that an inebriate might voluntarily apply to a Lunatic Asylum for treatment. But this provision, though well-intended, has for very obvious reasons done almost no good. Whether an habitual drunkard is ever insane or not, to ask him to declare himself to be so was practically to court defeat, as every one must know who has had to do with this unfortunate class at all. In 1870, the late Dr. Donald Dalrymple, M.P., introduced a Bill upon the subject, but only

* Afterwards published under the following title—“On Some of the Medico-Legal Relations of Intemperance.” By Robert Christison, M.D., etc. Edinburgh: Adam and Charles Black. Page 60. 1861.

succeeded in advancing opinion upon it so far as to allow of the appointment of the Committee above referred to, two years later. Of this Committee's labours I have already expressed the very high appreciation which I think everyone must feel after reading their report and evidence in detail. Nothing in it is extreme or paradoxical in statement ; it expresses the unanimous opinion of a group of legislators fairly representative, it may be assumed, of that highly composite ideal, John Bull himself ; and certainly not less disposed than John Bull to value that glorious palladium—"the liberty of the subject"—in every reasonable view of it. Yet these fifteen good men and true, being confronted with the evidence of actual facts through the mouths of numerous intelligent witnesses, had no difficulty at all in seeing their way to the conclusion, that to speak of "liberty" in connection with incontrollable drunkenness (whether insane or not), is in very serious earnest a total abuse of the word. Every drunkard, indeed, is for the time being a slave to his "*voluntarius dæmon*." The irreclaimable drunkard is tenfold—nay, an hundredfold, a slave ; and can only be restored to anything at all resembling liberty by putting him under some restraint. This truth the Committee of 1872 had the courage and good sense to proclaim in connection with a very carefully considered series of suggestions for legislation, which I am afraid time will not allow of my setting forth to you in detail this evening ; but on these lines, I may say in general terms, I believe that legislation must ultimately proceed, if it is ever to do any good at all. I have no hesitation in affirming that the more this valuable report is diligently studied, the more will its conclusions appear to have been carefully framed and moderately expressed ; and sooner or later the stolid resistance, which has hitherto defeated every attempt at really effective legislation, must inevitably give way before arguments and facts so irresistibly confirmed by medical experience. Up to the present time, however, John Bull may be said to have set up his back, and practically to hold the field against all comers, in the name of the "liberty of the subject." Hence, perhaps, the present attempt to explore the Midland

Counties—possibly one of his strongholds—through the medium of this Society.

In 1877 Dr. Cameron, M.P. for Glasgow, brought in a bill which, in general, was intended to proceed upon the lines of the recommendations of this Committee. Two years later, taught by experience as to the delay and obstruction which his first effort had encountered, Dr. Cameron submitted to have his bill shorn of its most essential and vital element—the power of compulsory detention; and in this emasculated, and therefore inefficient, condition it passed the House of Commons, and was afterwards piloted through the House of Lords by the late Lord Shaftesbury, as “The Habitual Drunkards’ Act, 1879.” The Act defines an habitual drunkard as a person who, *not being amenable to any jurisdiction in lunacy*, is, notwithstanding, by reason of habitual drinking of intoxicating liquor, at times dangerous to himself, herself, or others, or is incapable of managing himself or herself, and his or her affairs. Unfortunately it provides for voluntary admission only, and therefore is bound to be without any result as regards the great majority of incontrollable drunkards. Dr. Cameron has frankly confessed that, in despair of carrying his bill, he had to be satisfied with getting in the thin end of the wedge. All that can be said is that, for the purpose in view, the edge is so very thin as to be almost unfelt. In 1888, however, this Act, originally limited to ten years, was rendered permanent by a short Act, which was obtained with little difficulty. Both Houses of Parliament, therefore, have accepted finally the principle that an habitual drunkard, who will confess himself to be such and will apply to a magistrate to be detained, may be detained, under proper supervision, in a house specially licensed for the purpose. There is therefore now on the Statute Book an Act providing at least a machinery on which a more efficient legislative measure might be founded, by certain improvements in detail, and by adding provisions for compulsory detention, properly guarded against abuse.

Although no further legislation has taken place on this

subject, Mr. Charles Morton, W.S., Edinburgh, who formerly held, under several Governments, the important post of Crown Agent, has occupied himself since 1887 with drafting a bill to apply to Scotland only, and intended to be called the "Restorative Homes (Scotland) Act." Its objects are explained in a Memorandum, which contains a very useful sketch of the whole subject. This draft bill was brought under the notice of the Marquis of Lothian, as Secretary for Scotland, in January, 1888, backed by a strong letter commending it to his lordship as at least a basis for such legislative action as the Government might be disposed to approve. This letter was signed by numerous representative men in Edinburgh, Glasgow, Dundee, and Aberdeen; and it was understood at the time that the Government had favourably entertained the subject with a view to legislation, and were even occupied with a bill of their own. As yet, however, nothing has followed in Parliament from this new move; but Mr. Morton's draft bill has been in a general way supported by the British Medical Association,* and has been the subject of a long and most interesting discussion in the Edinburgh Med. Chir. Society,† which may be considered to embody all the latest suggestions on the subject. The Society was by no means unanimous. One obvious objection to Mr. Morton's draft bill was clearly brought out in the course of the discussion, viz., that it might be regarded as a "class" bill, and even as one favouring the wealthy and well-to-do class at the expense of the poor or of the general ratepayer. But, all the same, this valuable discussion has brought out a great preponderance of opinion in Scotland in favour of the general principle of the bill, not only in the medical but in the legal profession; and Mr. Morton assures me privately that the opinion of the latter in Scotland stands in marked contrast with much of what we hear as to legal opinion in England, and is by no means opposed to

* An analysis of the bill, clause by clause, will be found in the proceedings of the Parliamentary Bills Committee of the Association. See *British Medical Journal*, Aug. 3rd, p. 273.

† *Edinburgh Medical Journal*, June and July, 1889.

protective and preventive legislation on behalf of the habitual drunkard. The deliverance of the Society upon the whole subject, after a full discussion and with ultimate unanimity, was as follows:—"That the Society memorialise the Secretary of State for Scotland and the Lord Advocate praying the Government to initiate legislation for Scotland on the lines indicated in Mr. Charles Morton's draft Restorative Homes Bill, or in other ways that may seem to them in their wisdom to be more desirable, to provide compulsory powers of control and detention of habitual drunkards in properly regulated houses." And so the matter stands, so far as Scotland is concerned.

In the preceding remarks, it may very well seem to you that I have refrained too much from indicating my own opinion in detail, not only upon past legislation but also as to what is possible in future. The reason is, first, that I am not a lawyer, nor a law-maker: and no opinion of mine as such would be entitled to much authority or respect. But, further, it happens that in 1869, when the now defunct Social Science Association met in Bristol, I was led, at the request of the Secretaries, to submit some observations on this subject in a paper which extends over only five pages in their Transactions, and which, although I will not inflict it upon you at this late hour, I should like to be considered as, practically, a part or section of the present address. The paper, I believe, fell flat. I was not there to defend it; and, in the brief discussion which followed, no one seemed to care to attack it. The *Glasgow Herald* treated it with some good humoured banter: and the total abstainers and temperance advocates generally fell foul of me on the other side, because I *only* proposed to deal with *drunkenness*, and could by no means fall in with their legislative panaceas against drinking. Nevertheless, it has greatly pleased me to observe that almost every one of the suggestions I then made has been set forth again with new evidence and new authority in the admirable Parliamentary Report of 1872, to which I have so often referred; and, as I am still convinced that a good deal

might be or may be done in that direction, I will ask those who have done me the honour of listening to me now to refer to that paper as containing what I believe to be a fairly consistent and, in the end, a practicable scheme for dealing with the whole matter.

APPENDIX.

WHAT LEGISLATIVE MEASURES MIGHT BE PROPOSED TO DEAL
WITH CASES OF UNCONTROLLABLE DRUNKENNESS? *

BY W. T. GAIRDNER, M.D.,

PROFESSOR OF MEDICINE IN THE UNIVERSITY OF GLASGOW,
AND MEDICAL OFFICER FOR THE CITY.

THE following suggestions are the result of a professional experience which has led to the frequent and careful consideration (with a view to remedy) of the deplorable evils arising from drunkenness, especially in large towns.

To forbid altogether, or at least over as large an area as possible, the giving or using of intoxicating drinks is the usual remedy of the total abstainer. The difficulties hitherto observed as being in the way of legislation founded on this principle, have arisen from the fact that a large majority of men, although fully alive to the evils of intoxication, are not in principle or in practice total abstainers; and at least until this state of opinion and practice is reversed, so that the large majority becomes the small minority, it may be regarded as certain that the opinion of society will always weigh heavily in the scale against a law enforcing total abstinence against any large body of the people. Even if a law operating in this direction should be passed, it cannot be expected to work smoothly in practice when thus heavily weighted. The force of opinion, which in this country is greater than law, will assuredly, sooner or later, defeat in detail enactments opposed to the convictions, or even the prejudices, of a very large majority.

* This title was furnished by the Secretaries of the Health Section to me as the proposed subject of a discussion, preceded by one or more papers. See "Transactions of the National Association for the Promotion of Social Science," 1869, p. 421.

But it would be quite otherwise with a law or laws, however stringent, the principle of which was to forbid altogether the giving or using of intoxicating drinks *so as to produce drunkenness*. In legislation founded on this principle, there is no risk whatever of offending the convictions of honest men and good citizens, who may not happen to be abstainers. The only risk (and it is one not to be overlooked) is in carrying legislation over the line of effective action in detail, in other words, trying to do that which, simply because it is impracticable, is inexpedient.

I.—Suppose then, as a first step, we were to enact a law directed—not against the selling of intoxicating liquors under such and such circumstances of time or place (as has been the general rule in restrictive legislation)—but against the selling or procuring the sale of intoxicating liquors to any man or set of men so as to promote or to produce intoxication; or, more specifically, so as to bring intoxicated persons under the notice of the police. Is there any honest man or good citizen whose convictions would be offended by the principle of such a law?

It might indeed be objected that such a law would be very liable to evasion; that drunkenness is not a very clearly definable state; that a small quantity of drink will sometimes take an unexpected effect, while a much larger quantity may produce no visible effect at all, &c.; all of which must be freely admitted as difficulties in the way of pushing legislation in this direction to extremities. Well, then, let us concede that legislation must not be made too stringent (at least for isolated offences) in this direction; that ample opportunities must be given to an accused person to prove that he did not intend to break or to evade the law: still, making all these admissions, we may hold that it would be a point gained to make the publican legally responsible for the production of the drunkard, and subject him to a heavy fine, or in aggravated cases, to imprisonment, in the event of his knowingly violating the law.

I do not anticipate any serious objection to the abstract justice of the principle implied in mulcting heavily the profits of a business so adverse to social order as to exist by habitually

making men drunk for the purpose of gain ; which is no exaggerated description of an ill-conducted public-house. But it will be asserted that, even in well-conducted houses men will occasionally get drunk, or will drink to the extreme limit of what may be termed by courtesy relative sobriety, and that it is extremely difficult for a man who professes to sell liquor to the public at all, to refuse it to such persons. Granted: and for this very reason it appears more than ever important to affirm the legal principle that making men drunk is an offence against society ; and that the publican is, of all men, under the strongest and severest of obligations to give his aid in restraining that offence.

But if it be still maintained that legislation founded on this principle will be necessarily too exacting as regards the publican, I reply that this plea is destructive of the only ground on which it can be right for society to tolerate public-houses at all—the ground, namely (which I am far from disputing), that a public-house can be respectably conducted, and that in our social arrangements we should encourage respectable establishments while discouraging the opposite class. It may even be affirmed that the publicans themselves have been among the warmest advocates of arrangements by which disreputable houses may be discouraged ; and with good reason. The honest and well-meaning publican (giving him all the credit he can possibly claim for personal character and purity of motive) must know far better than anyone else that he is engaged in a business which in careless or unworthy hands may, and does, become one of the worst of social nuisances. It is only by resolutely and systematically declining all business of an equivocal kind that he can keep his own position unquestioned ; and such a law as I have indicated would furnish him at once with the strongest inducement so to conduct his business, and the most thorough support from the law in doing so. For it would be the express object of this law to put an end to that base competition downwards which the licensing system attacks so capriciously and ineffectually through the occasional suppression of

the inferior houses. The object of this law would be to attack these houses directly, by the systematic destruction of the sources of their profits.

The first principle, then, in dealing with drunkenness on the great scale, must be to aim deliberately at the suppression of that part of the traffic in intoxicating liquors which consists in the encouragement of drunkenness. In other words, the law must deliberately condemn, and must do its very best to put down in detail, all public-houses which are so conducted as to lure poor wretches to their destruction by systematically promoting excess under the name of "refreshment." Not until this is done, it is believed, will the existence of the public-house, even when controlled by the licensing system, become compatible with good government. As matters stand at present, it is well known that the lucrative character of the business defies all precautions and all restrictive legislation; and the only appreciable effect of suppressing or regulating public-houses has been to encourage immensely the increase of "shebeens," in which riot and excess are the rule instead of the exception. The proposed legislation would introduce what, in respect of its directness and impartiality, might almost be called a new principle; it would strike with equal severity the essentially immoral element in the traffic of the licensed and the unlicensed house; but in so doing would, it is hoped, extinguish the latter, and permit the former to exist only when scrupulously conducted in accordance with social order. And thus only does there seem to be a prospect of uniting the scattered forces of society in an effective crusade against the evils of excess, especially among those deeply degraded classes which the law, in its present condition, utterly fails to reach until drunkenness culminates in positive crime.

II.—But if the law is to aim at the suppression of the traffic in drink in so far as it leads to intoxication, we can scarcely escape the logical consequence of this principle: viz., that drunkenness, the promotion of which by the publican is to be made an offence, should also be treated by the law as an offence

per se.* Here, however, there are distinctions to be made. The man who is accidentally, and as it were by the force of circumstances, seduced into drunkenness, is often only in a very modified sense responsible for the occurrence, and it would be cruel and wrong to add a legal penalty to the shame and self-reproach which are the sure punishment of a comparatively venial error. The man, again, who deliberately seeks the means of getting drunk, and who insists on getting drunk in spite of previous warnings, is guilty of an offence which ought not to be lightly passed over. Between these extremes there are all gradations of infirmity of purpose, yielding more or less consciously to temptation ; and, lastly, there is the terrible case of the poor victim who is literally the slave of drink—*non compos mentis aut corporis*, in so far as this appetite is concerned ; whose self-control has long vanished, so that he requires to be protected against himself, rather than to be punished for acts from which he is utterly unable to refrain.

To meet these different cases a variety of methods is required, but the following three principles would, I think, be fitted in the interest of society to deal with most of them, so as to give as much discouragement to deliberate evil-doing, and as much aid to human infirmity in the battle with temptation, as it is possible to afford by any system of law. The details of legislation I cannot, of course, pretend to discuss at present.

First—The casual offence might either be passed over altogether, if of the venial kind above indicated, or it might be met by a fine, or by a very brief imprisonment, at the discretion of

* I was not aware at the time this was written of what is stated as follows by Blackstone (Book iv., ch. 4. x.) :—"Drunkenness is also punished by statute 4. Jac. I., c. 5, with the forfeiture of 5s. : or the sitting six hours in the stocks, by which time the statute presumes the offender will have regained his senses, and not be able to do mischief to his neighbours." In Scotland the offence of notorious and excessive drinking was formerly punishable by fine or imprisonment, or by corporal pains, under several statutes of the Scots Parliaments—*e.g.*, 1436. c. 144 ; 1617, c. 20 ; 1661, c. 19 ; 1672, c. 22 ; 1693, c. 40 ; 1696, c. 31. All of these statutes are now in desuetude ; and (according to Hume I., 465) the mere indecency of getting drunk does not now, in the general case, subject the offender to any punishment, though it frequently leads to greater crimes.

the magistrate.* The effect of such slight punishments would often, it is true, be quite inadequate, but they would at least serve to mark and register the offence, and thus, in the event of repeated acts of drunkenness on the part of the same person, would prevent the fact of previous convictions from being overlooked. Any punishment going beyond this for a simple act of drunkenness would probably be inexpedient, if not unjust, inasmuch as it would often fall not so much on the actual offender as on his family and friends.

Secondly--The habitual offence might be met by the sequestration, for a limited time, of the weekly wages, or other emoluments and profits of business, applying these, under trust, to the support of the family, and to the maintenance of the drunkard himself, and so leaving him *pro tempore* free to earn, but not free to spend.

With a view to the utmost simplicity of the legal machinery, and therefore of expense, the Trustee might be nominated by the drunkard himself and by the wife or nearest relative, with the consent of the magistrates, and should be authorised to receive the whole of the wages, and administer them in the interest of the family, or in case of savings over and above what may be necessary for this purpose, to deposit them in the National or other Savings Bank during the period assigned as the duration of the trust. In this way a drunkard, in the receipt of good wages who, though infirm of purpose, might not be wholly

* On this subject the Committee on Habitual Drunkards, 1872, reported as follows :—"That the fine of 5s. imposed by the 4th and 21st of James I. was a much heavier fine at the time it was enacted than it is now, and it might be expedient to raise it to a sum not exceeding 40s. The fine should be recorded against the individual in a Drunkard's Register, and be made progressive, and to the fine should be added the costs often incurred by the police or the public in conveying the offender to the station. This should apply to cases of common street drunkenness, usually classed as 'drunk and incapable.'"

"That after three convictions within twelve months the magistrates should be empowered to require the offender to find a surety or sureties for sobriety and good conduct for a fixed period, and in default of the same, or in case the surety is forfeited by a fresh offence, then to sentence the offender to a considerable period of detention in an industrial reformatory for inebriates as hereafter recommended."

demoralised, and who might be really attached to his family and anxious for their welfare, might be made to save money (as it were in spite of himself), perhaps for the first time in his life, and there is even room for hope that in some cases the actual possession of such savings might lead to new and better desires, and thus to a permanent reform of the bad habit. On the other hand, the failure of this measure, and the dissipation of the accumulations made during the time of compulsory soberness, would of itself become an argument in favour of further proceedings in restraint, just as frequent convictions for casual drunkenness would in due course give rise to the proceedings just detailed.

Thirdly—The inveterate offence might be dealt with in two ways not inconsistent with each other, but offering also an alternative to be employed with due regard to the circumstances of the case; (*a*) the property and earnings of the drunkard, if any, might be wholly placed for a lengthened period under the charge of a tutor, as in cases of insanity, and a formal allowance might be made to him on condition of his living out of the way of temptation; or otherwise the income might be used for the benefit of the family, as in the preceding class of cases; or (*b*) the person of the drunkard might be placed under restraint in properly regulated establishments like the “inebriate asylums” of America, under State inspection and control. In either case the proceedings should be assimilated to those in cases of insanity; but the only facts necessary to be proved should be the inveterate and incontrollable tendency to consume strong liquors to excess, resulting either in the reckless squandering of income required for proper maintenance, or in disordered health, bodily or mental, and obviously impending ruin to the drunkard’s estate and the prospects of his family.*

* On the subject of the inveterate offence, as above indicated, the Committee of 1872 report as follows:—“That when an offender has been called on to find sureties, and has been unable to do so, or when by a fresh offence he has forfeited them, or when he has been called upon a second time to find sureties, he should be deemed and registered as an ‘Habitual Drunkard,’

A great deal has been written as to the connection between such loss of self-control as is here indicated and insanity, or as to the point at which such a condition becomes insanity ; but for practical purposes I do not think it necessary to raise this question here, if it be conceded that the condition of helpless and inveterate self-abandonment to habits of intoxication is a condition requiring the interference of the law ; and one which, in the interest of society at large, as well as of those depending on the victim of these habits, might be more or less effectually mitigated, if not permanently reformed, by restrictions such as are here indicated. On this point the experience of the medical profession will be found valuable, whatever the views entertained by individuals as to the meaning and scope of the technical terms "insanity" or "dipsomania," which, in my opinion, might without disadvantage be kept out of the discussion.

Although the preceding observations, in their details, are to some extent outside the limits indicated in the programme for discussion at the present meeting, yet the principle of them

and as such may be sent to an industrial inebriate reformatory by magistrates' order for a term of not less than three, nor more than twelve, months, the time to be governed by the frequency of the offence."

"That when acts of violence or other offences are superadded to the drunkenness the ordinary punishment awarded by law to those offences should be carried out, and if the offender comes under the definition of an habitual drunkard a committal to a reformatory may form part of the sentence, or it may be left to the discretion of the magistrates to send him at once to an inebriate reformatory."

The necessary precautions against abuse are given in great detail, but need not be quoted here, as the present paper only deals with principles. The following, however, as regards the property of the habitual drunkard, is interesting as shewing the Committee of 1872 strictly in line with the suggestions made above :—

"If proof be deemed sufficient by the court of inquiry it shall make an order for commitment to an inebriate institution for such term as it shall think proper, not exceeding twelve months, and shall also have power, *with or without such commitment*, to make an order for the appointment of a guardian or trustee of the cited party, person, or estate. The party cited shall have the right to be present, both in person and by counsel, and all the evidence shall be taken on oath. The property of the party shall be liable as in committees of the person and estate of lunatics, Act 25 and 26 Vict., c. 86."

is strictly in accordance with the scope of that proposed discussion. The author is of opinion that until the fact of overt drunkenness is recognised, *per se*, as amounting to an offence in law, no satisfactory progress can be made either in reforming or in controlling the drunkard. At present, while the crimes and civil disorder that proceed from drunkenness are often severely punished, the simple act of drunkenness, even when paraded in public, is treated as a mere infirmity. The law accordingly gets into an utterly illogical position towards the habitual drunkard. It has passed over without remark innumerable flagrant transgressions and outrages on public decency. But when even one of these outrages is followed by positive crime the law steps in to exact the full penalty, and does not allow the drunkard to plead irresponsibility. And in like manner the publican is at once too leniently and too hardly dealt with; the law allows him to make as many men drunk as he pleases, in the ordinary way of business; but when a certain combination takes place among the magistrates who gave him his license, it is withdrawn, perhaps because he has plied his trade only too well. The object of the preceding paper has been to establish, if possible, a more logical and consistent rule for dealing with the whole subject.

* Dr. Wade moved and the Rev. Dr. Gardiner seconded the following resolution, which was carried unanimously :—

“That this meeting is strongly in favour of fresh legislation in the direction of compulsory provisions for the detention and treatment of well-defined cases of habitual inebriety, in the interest of the individual and of the community at large.”

* *Resolution* passed at a Meeting of the Midland Medical Society held at Birmingham, on 16th November, 1889.

